



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V

DATE: OCT. 22, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a seeks second preference immigrant classification for the Beneficiary as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established the beneficiary's eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that the Beneficiary is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met. *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Beneficiary qualifies as a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of the Beneficiary's proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner indicated that it intends to continue to employ the Beneficiary as a technical product manager.⁴ The record includes a letter from [REDACTED] vice president of human resources for the Petitioner, stating that the Beneficiary's proposed endeavor involves developing and integrating Internet Protocol (IP) [REDACTED] routers to enable high-speed, secure and efficient broadband [REDACTED]. In addition, [REDACTED] asserted that the Beneficiary's work is aimed at "managing the development of [the Petitioner's] newest [REDACTED] routers, which will offer higher volumes of data throughput as well as greater security and mobility for end users across the globe." She further explained:

Specifically, [the Beneficiary] defines hardware, software and networking requirements to meet commercial and defense requirements for numerous next-generation routers that will update the current fleet of IP-based [REDACTED] routers in [the Petitioner's] [REDACTED] platform. These routers will meet the new DVB-S2X standards, an extension of the DVB-S2 [REDACTED] digital broadcasting standard, which offers efficiency gains up to 51%. [The Beneficiary] will also continue to guide the implementation of [the Petitioner's] newest [REDACTED] routers into the networks of some of the leading [REDACTED] network providers, such as [REDACTED] and [REDACTED].

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record reflects that he received a Master of Science degree in telecommunications from [REDACTED] University in May 2010.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for the Beneficiary to have a job offer from a specific employer. However, we consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

The record contains additional letters of support discussing the Beneficiary's proposed work as a technical product manager for the Petitioner.⁵ For example, [REDACTED] Senior Vice President of Global Sales at [REDACTED] a [REDACTED] technology company, stated that the Petitioner is introducing its "next-generation DVB-S2X transmission technology" and a "range of new IP-based DVB-S2X routers which leverage the DVB-S2X technology."⁶ With regard to this project, [REDACTED] indicated that the Beneficiary's proposed work involves the "implementation stage of this new product" and developing the "IP-based [REDACTED] routers on the [REDACTED] platform for supporting maritime and aeronautical applications." He further explained that the Beneficiary's services are necessary for "developing, testing, and implementing IP-based protocols and IP-based [REDACTED] routers" and ensuring that they "meet the U.S. Department of Defense's (DOD) stringent transmission security requirements and performance demands of U.S. industry."

Likewise, [REDACTED] general manager of [REDACTED] a company that "specializes in engineering and manufacturing [REDACTED] systems," asserted that the Beneficiary's proposed work involves using his "skills to define and implement support for DVB-S2X transmission technology on [the Petitioner's] IP based [REDACTED] router iQ desktop, iQ 200 Rackmount." He also stated that this work encompasses "validating these new design architectures meet the spectrum requirements set by the governing bodies in addition to meeting the high throughput and security requirements of commercial and government customers."

Furthermore, [REDACTED] a project manager and senior systems engineer with [REDACTED] a British [REDACTED] company that provides global mobile [REDACTED] services, stated that the Beneficiary "is continuing to drive the IP solution design and architecture for [the Petitioner's] next generation IP based [REDACTED] routers namely the iQ 200, iQ 500, and iQ 800." In addition, [REDACTED] indicated that his company is relying on the Beneficiary's ongoing involvement in the Global Xpress (GX) [REDACTED] worldwide broadband network initiative. [REDACTED] further noted that this initiative seeks to "develop and deploy new satellites, upgrades and innovations to meet the ever-growing needs of the government and the commercial sectors," but did not discuss the specific GX projects the Beneficiary plans to undertake on behalf of the Petitioner.⁷

The Petitioner submitted articles and reports relating to Russia's targeting of internet routers for espionage, DOD's "2018 National Defense Strategy," the Defense Business Board's recommendations to help DOD leverage opportunities from [REDACTED] providers, a pilot program to integrate commercial industry capabilities into DOD [REDACTED] operations, and recommendations from the Defense Science Board's Task Force on [REDACTED]

⁵ We discuss a sampling of these letters, but have reviewed and considered each one.

⁶ The record does not show that the Petitioner was among the team of engineers who invented the DVB-S2X transmission technology.

⁷ Regarding the Beneficiary's prior work for the GX [REDACTED] system, [REDACTED] stated: "[The Beneficiary] was not only involved in the planning of GX, he spent three years validating and integrating [the Petitioner's] IP-based [REDACTED] routers into [REDACTED]'s GX network and setting up the unique infrastructure of [REDACTED] GX teleports. He also performed the testing and validating of networking features and hardware and software failover mechanisms" The Petitioner's previous [REDACTED] network planning, integration, and validation projects are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here under the first prong is the potential prospective impact of the Petitioner's proposed work as a technical product manager and whether it rises to the level of national importance.

[redacted] The record also includes the National Defense Authorization Act for 2016, a Defense Information Systems Agency overview of [redacted] [redacted], an article from [redacted] promoting the Petitioner's Evolution® product line of remote communications network technologies, and various marketing materials and information relating to the Petitioner's products and services. In addition, the Petitioner presented a study indicating that the U.S. oil and gas industry supported 10.3 million jobs in 2015, information about [redacted] services in the oil and gas market, articles about the increase in offshore oil production, and documentation about [redacted] and its GX [redacted] system. While the Director determined that the aforementioned information and letters of support show the Beneficiary's proposed work developing and integrating [redacted] routers has substantial merit, he concluded that the evidence was not sufficient to demonstrate this endeavor's national importance.

On appeal, the Petitioner contends that the aforementioned letters "serve as sufficient evidence on their face to clearly define [the Beneficiary's] proposed endeavor and how it directly impacts the [redacted] field, a recognized industry of national importance." The Petitioner also argues that the Director did not "grasp the sensitive and confidential nature of the proposed endeavor."

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Beneficiary's work. The Petitioner contends that the national importance of the Beneficiary's endeavor is evident from the widespread usage of its [redacted] routers by DOD, civilian government agencies, and commercial industry and from the company's innovative technologies relating to IP-based [redacted] routers. But the Petitioner has not demonstrated that the economic implications and [redacted] technological advancements resulting from its operations would be attributable to the Beneficiary's particular role as a technical product manager to an extent that his proposed work holds national importance. The issue here is not the broader implications of the company's innovations in [redacted] or the utilization of its products by government and industry, but rather the potential prospective impact of the Beneficiary's specific proposed work as a technical product manager.

In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Beneficiary's proposed endeavor stands to sufficiently extend beyond his employer, its business partners, and its clientele to impact the [redacted] industry more broadly at a level commensurate with national importance. Nor has the Petitioner shown that the particular work the Beneficiary proposes to undertake offers original innovations that contribute to advancements in the [redacted] industry, or otherwise has broader

implications for the telecommunications field. Accordingly, without sufficient documentary evidence of their broader impact, the Beneficiary's proposed IP[] router development and integration services for the Petitioner do not meet the "national importance" element of the first prong of the *Dhanasar* framework.

Furthermore, the Petitioner has not demonstrated that the Beneficiary's proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Beneficiary's future technical product management work, the record does not show that benefits to the regional or national economy resulting from his projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Beneficiary's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of the Beneficiary's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Beneficiary's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that it has not established the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of V*[] ID# 4688463 (AAO Oct. 22, 2019)